

**U.S. Army Corps
Of Engineers**
Norfolk District

Fort Norfolk, 803 Front Street
Norfolk, Virginia 23510-1096

August 23, 2005

**Proposed Regional Permit for Artificial Reefs established by the
Commonwealth of Virginia**

In June 2005 the Virginia Marine Resources Commission (Virginia Marine Resources Commission) ceased issuing permits for artificial reefs created under the Virginia Reef Program. This invalidated the use of Norfolk District's Regional Permit-19, Activity 15. The development of reefs by VMRC within the territorial waters of the Commonwealth offers significant benefits to the environment as well as the commercial and recreational user while the detriments have been historically minimal.

Based on this, the Norfolk District is proposing to issue a Regional Permit (RP-20) for the development of State owned and operated artificial fin and shellfish reefs. This Regional Permit will streamline the permitting process yet ensure that each proposal receives the appropriate level of review to keep potential impacts at a minimum.

FEDERAL EVALUATION OF APPLICATION: The decision whether to issue this regional permit will be based on an evaluation of the probable impact including individual and cumulative impacts of the proposed regional permit on the public interest. The decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected from the proposed regional permit must be balanced against its reasonably foreseeable detriments. All relevant factors will be considered, including conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use classification, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The Environmental Protection Agency's "Guidelines for Specification of Disposal Sites for Dredged or Fill Material" will also be applied [Section 404(b)(1) of the Clean Water Act].

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of the proposed regional permit. Any comments received will be considered by the Corps of Engineers to determine whether or not to issue the proposed regional permit. To make this decision, comments will be used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and

the other public interest factors listed above. Comments will be fully considered and the existing Environmental Assessment modified accordingly. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed regional permit. Anyone may request a public hearing to consider this proposed regional permit by writing to the District Engineer within 30 days of the date of this notice, stating specific reasons for holding the public hearing. The District Engineer will then decide if a hearing should be held.

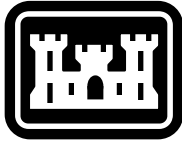
Preliminary review indicates that: (1) no environmental impact statement will be required; (2) no species of fish, wildlife, or plant (or their critical habitat) listed as endangered or threatened under the Endangered Species Act of 1973 (PL 93-205) will be affected; and (3) no known properties eligible for inclusion or included in the National Register of Historic Places would likely be affected by the proposal as specific procedures have been incorporated into the proposed regional permit. For compliance with the Coastal Zone Management Act of 1972, as amended, we must certify that federally licensed or permitted activities affecting Virginia's coastal zone (Tidewater) will be conducted in a manner consistent with the Virginia Coastal Resources Management Program (VCP). For more information or to obtain a list of the enforceable programs of the VCP, contact the Department of Environmental Quality, Office of Environmental Impact Review at (804) 698-4330 or e-mail: elirons@deq.state.va.us.

COMMENT PERIOD: Comments on this project should be made in writing, addressed to the Norfolk District, Corps of Engineers (ATTN: CENAO-TS-REG, Rick Henderson), 803 Front Street, Norfolk, Virginia 23510-1096, and should be received by the close of business on September 21 2005.

If you have any questions about this project or the permit process, please call Mr. Henderson at 757.201.7653 or email him at Richard.E.Henderson@usace.army.mil.

FOR THE DISTRICT ENGINEER:

J. Robert Hume, III
Chief, Regulatory Branch



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PROPOSED REGIONAL PERMIT

DRAFT

Effective Date: ?????????, 2005

Expiration Date: ????????, 2010

Authorized Activity: The creation of artificial reefs and dredging of old shellfish reefs when the material will be used to create new reefs by the Commonwealth of Virginia.

The Commonwealth of Virginia is hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344) to create artificial reefs and to dredge historical shellfish reefs when the material will be used for the construction of new reefs in Waters of the United States provided the project complies with the provisions and conditions set forth below.

The intent of this permit is to provide a streamlined process that enables the Commonwealth of Virginia to enhance fisheries habitat beneficial to the Citizens of the Commonwealth.

Special Conditions:

1. A complete application will be submitted to the Corps of Engineers for review.
2. A proponent of work proposed in the following waterways must obtain an easement to cross government property from our Real Estate Division (if required) before any construction can take place:
 - a. James River
 - b. Lynnhaven Inlet and Connecting Waters
 - c. All Local Cooperation Agreement areas
 - d. Dismal Swamp Canal
 - e. Albemarle and Chesapeake Canal
 - f. Appomattox River

For further information on the need to obtain a government easement, please contact Norfolk District's Real Estate Division at the address on the first page of this regional permit or telephone (757) 201-7735.

3. No portion of the reef will be constructed in area where SAV's or wetlands exist.
4. All material used in the construction of the reefs shall be of clean suitable material. Vessels or mechanized vehicles shall be inspected by the United States Coast Guard to ensure hazardous material will not enter the watershed.
5. Lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained at the expense of the permittee. The USCG may be reached at the following address and telephone number: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704-5004, telephone number (757) 398-6230.
6. If and when the permittee desires to abandon the authorized activity he or she must restore the area to a condition satisfactory to the District Engineer unless the permittee is transferring his or her interest to a third party.
7. The Secretary of the Army or his authorized representative may direct the permittee to restore the waterway to its former condition, with no expense to the United States. If the permittee fails to comply with the directive, the Secretary or his representative may restore the area to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.
8. No activity may cause more than a minimal adverse effect on Navigation, both commercial and recreational.

General Conditions:

1. This regional permit will authorize work undertaken within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District.
2. A copy of this permit and any verification letter must be provided to the contractor and made available at the project site to any regulatory representative.
3. (a) No activity is authorized under this permit which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the Norfolk District if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work until notified by the district engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

(b) Authorization of an activity by a this permit does not authorize the “take” of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g. an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal “takes” of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world web pages at <http://www.fws.gov/~r9endspp/endspp.html> and http://kingfish.spp.mnfs.gov/tmcintyr/prot_res.html#ES and recovery, respectively.

4. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized until the Norfolk District has complied with the provisions of 33 CFR 325, Appendix C. The prospective permittee must notify the Norfolk District if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the Norfolk District that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the Virginia Department of Historic Resources and the National Register of Historic Places.
5. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify the Norfolk District of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
6. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely effect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the National Park Service and the U.S. Forest Service.
7. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
8. Authorized activities must comply with Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”.
9. No activity may cause more than a minimal adverse effect on navigation.

10. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

11. The construction or work authorized by this permit will be conducted in a manner so as to avoid any degradation of water quality and/or damage to aquatic life where possible, and minimize any degradation where unavoidable. Also, you will employ measures to prevent or control spills of fuels or lubricants from entering the waterway.

12. Permittees are expected to fully comply with Virginia Regulation 680-21-00, Water Quality Standards and all other appropriate laws and regulations of the Commonwealth of Virginia pertaining to water quality.

13. The permittee will make every reasonable effort to conduct the construction or operation of the work authorized by this permit in a manner so as to minimize any adverse impact on fish, wildlife and natural environmental values.

14. The permittee shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

15. Failure to comply with the terms and conditions of this permit can result in enforcement actions against the permittee and/or contractor.

16. Any reef authorized shall be properly maintained, including maintenance to ensure public safety.

17. The provisions of this permit shall be binding on any assignee or successor in interest of the permittee.

18. In order to transfer this permit, the transferee must supply the Norfolk District with a written request to transfer the permit.

19. Should you be unable to complete the authorized activity in the time limit provided, you must submit your request for a time extension to this office for consideration at least one month before the permit expiration date.

20. In granting an authorization pursuant to this permit, the Norfolk District has relied on the information and data provided by the permittee. If, subsequent to notification by the Corps that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the Government may institute appropriate legal proceedings.

21. Limits of this authorization:

- a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal projects.
- e. This permit does not grant any Corps real estate rights. If real estate rights are needed from the Corps, please contact Norfolk District's Real Estate Division at the address listed on the front page or telephone (757) 441-7735.

22. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

23. The Norfolk District may reevaluate its decision on your authorization under this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate.
- c. Significant new information surfaces which this office did not consider in reaching the original decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost. In addition, unpermitted work or violation of permit conditions may result in civil, criminal or administrative penalties (33 U.S.C. 406).

26. This permit, unless further modified, suspended or revoked, will be in effect until **XXXXXX, 2010**. Upon expiration, it may be considered for revalidation.

Date

Yvonne J. Prettyman-Beck
Colonel, Corps of Engineers
Commanding